

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>PEGASUS INTERNATIONAL, INC.</b>	:	
<b>Plaintiff,</b>	:	
	:	<b>CIVIL ACTION</b>
<b>v.</b>	:	<b>NO. 06-2943</b>
	:	
<b>CRESCENT MANUFACTURING</b>	:	
<b>COMPANY</b>	:	
<b>Defendant.</b>	:	
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DuBOIS, J.

APRIL 2, 2007

**MEMORANDUM**

**I. INTRODUCTION**

This case arises out of a contract between plaintiff Pegasus International, Inc. and defendant Crescent Manufacturing Co. regarding the sale of household cleaning products. The Court has diversity jurisdiction under 28 U.S.C. § 1332(a)(1). Compl. ¶¶ 1, 2, 4; Ans. ¶¶ 25-27. Presently before the Court are Plaintiff's Motion for Joinder of Party Pursuant to Federal Rule of Civil Procedure 19(a) and Plaintiff's Motion for Leave to File Amended Complaint. For the reasons set forth below, the Motion for Joinder is denied, and the Motion for Leave to File Amended Complaint is granted.

**II. BACKGROUND**

In this Memorandum, the Court sets forth only the factual and procedural background necessary to explain its ruling.

**A. Plaintiff's Complaint and Defendant's Counterclaims**

Plaintiff and defendant had a business relationship, in which defendant manufactured and sold household cleaning products to plaintiff. See Compl. ¶ 6; Ans. ¶ 29. Plaintiff then resold

these products to retailers, including “the Dollar Store, Grocery, or drug store trades.” Compl.

¶ 6. Plaintiff’s second largest account was Dollar General. Id. ¶ 8.

Plaintiff commenced this action on July 6, 2006, alleging breach of contract and tortious interference with contract. The gravamen of plaintiff’s Complaint is that defendant breached a December 12, 2002 Confidentiality and Packaging Agreement, in which defendant agreed, *inter alia*, not to compete with plaintiff in the sale of household cleaning products to retailers. Id. ¶ 6. Plaintiff alleges that defendant solicited plaintiff’s customers, called upon or sold to ‘the Dollar Store, Grocery, or drug store trades,’ and intentionally interfered with plaintiff’s business relationship with Dollar General. Id. ¶ 8. As a result, plaintiff allegedly lost the Dollar General account and suffered approximately \$9 million to \$15 million in damages. Id. ¶¶ 8, 12. Plaintiff seeks compensatory damages, punitive damages, and injunctive relief. Id. ¶¶ 12, 16.

Defendant has asserted sixteen counterclaims against plaintiff, including fraud and breach of contract. Defendant alleges, *inter alia*, that plaintiff ordered and received goods from defendant, for which plaintiff did not intend to pay, Ans. ¶¶ 37, 44, 47, 54, and that plaintiff ultimately did not pay for goods it ordered or received. Id. ¶ 51, 52, 53, 63. Defendant seeks over \$1,684,701 in compensatory damages and \$10 million in punitive damages. Id. ¶ 58.

#### **B. Plaintiff’s Allegations Regarding S.S. Nathans**

In the Motion for Joinder and the Motion for Leave to File Amended Complaint, plaintiff sets forth more detailed allegations regarding defendant’s alleged sales to Dollar General. Specifically, plaintiff alleges that defendant sold household cleaning products to Dollar General *covertly*, by pretending to be S.S. Nathans, an approved Dollar General vendor. Pl. Mot. Leave File Am. Compl. Ex. A ¶ 19. S.S. Nathans is allegedly a sole proprietorship of Sonny Nathans,

who “was completely unaware” of defendant’s actions. Id. ¶¶ 19, 22.

According to plaintiff, defendant’s president, Richard Frazer, initiated the alleged “scheme” by “direct[ing] his employees to lie to Dollar General representatives and claim that they were representatives” of S.S. Nathans. Id. ¶¶ 18, 19. Defendant’s employees then “proposed to Dollar General that S.S. Nathans replace Pegasus as its vendor of record for household cleaning and health and beauty products.” Id. ¶ 21. Dollar General agreed. As a result, Dollar General “ceased purchasing household cleaning and health and beauty products from Pegasus and, instead, purchased those products from Crescent,” which Dollar General believed was S.S. Nathans. Id. ¶ 27.

To maintain the impression that S.S. Nathans was the seller, defendant allegedly used S.S. Nathans’ “UPC barcode on the household cleaning and beauty aid products which it manufactured” for Dollar General. Id. ¶ 25. Defendant also “misappropriated S.S. Nathans’ on-line access code for Dollar General” and “changed this access code” so that S.S. Nathans could not monitor its Dollar General account. Id. ¶ 26. Defendant further hid its identity by instructing Dollar General to send payment to “Empire.” Id. ¶ 23. Defendant told Dollar General that Empire was “somehow related to S.S. Nathans,” but it was not. Id.

### **III. PLAINTIFF’S MOTION FOR JOINDER**

In the Motion for Joinder, plaintiff seeks to join Sonny Nathans d/b/a S.S. Nathans (“S.S. Nathans”) as a necessary party under Federal Rule of Civil Procedure 19(a). Plaintiff argues that S.S. Nathans is a necessary party because “S.S. Nathans intends to pursue claims” for the “disgorgement of all profits” obtained by defendant from Dollar General, and plaintiff seeks recovery of the same profits in this litigation. Pl. Mot. Joinder ¶¶ 3, 6. The Court disagrees. For

the reasons that follow, the Motion for Joinder is denied.

**A. Legal Standard: Federal Rule of Civil Procedure 19(a)**

Federal Rule of Civil Procedure 19(a) governs joinder of persons needed for a just adjudication of a civil action. That rule provides in relevant part:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Fed. R. Civ. P. 19 (a). The moving party has the burden of showing why an absent party should be joined under Rule 19(a). United States v. Payment Processing Center, LLC, 2006 WL 2990392, \*2 (E.D. Pa. Oct. 18, 2006). The Court considers the first and second sections of Rule 19(a) in turn.<sup>1</sup>

**B. S.S. Nathans Is Not a Necessary Party Under Rule 19(a)(1)**

Under Rule 19(a)(1), a court must determine whether complete relief can be accorded “on the basis of those persons who are already parties.” Angst v. Royal Maccabees Life Ins. Co., 77 F.3d 701, 705 (3d Cir. 1996). The effect of the litigation on the absent party is immaterial under Rule 19(a)(1). Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 405 (3d Cir.

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<sup>1</sup> The question whether joinder of S.S. Nathans would “deprive the Court of jurisdiction” is not at issue in this case. Fed. R. Civ. P. 19(a). Plaintiff alleges, and defendant does not dispute, that joinder of Nathans as either a plaintiff or a defendant would not destroy complete diversity because S.S. Nathans is a citizen of Nevada, plaintiff is a citizen of Pennsylvania, and defendant is a citizen of New York. Pl. Mot. Joinder ¶ 7. In addition, all additional defendants in the proposed amended complaint are citizens of New York. Id.

1993).

In this case, plaintiff does not seek relief against the absent party, S.S. Nathans. Indeed, S.S. Nathans was not a party to the contract that forms the basis of plaintiff's claims. Thus, full relief can be accorded to plaintiff without the joinder of S.S. Nathans, and S.S. Nathans is not a necessary party under Rule 19(a)(1).

**C. S.S. Nathans Is Not a Necessary Party Under Rule 19(a)(2)**

Under Rule 19(a)(2), a court must initially determine whether an absent party claims “a legally protected interest relating to the subject matter of the action.” Payment Processing Center, LLC, 2006 WL 2990392 at \*4. A mere “financial interest” is not a legally protected interest under the rule. Liberty Mut. Ins. Co. v. Treesdale, Inc., 419 F.3d 216, 230 (3d Cir. 2005) (quoting Spring-Ford Area School Dist. v. Genesis Ins. Co. 158 F. Supp. 2d 476, 483 (E.D. Pa. 2001)). If an absent party does claim a legally protected interest, a court must then determine whether the litigation “may (i) as a practical matter impair or impede the person’s ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations . . .” Fed. R. Civ. P. 19(a)(2).

In this case, plaintiff argues that S.S. Nathans is a necessary party under Rule 19(a)(2)(i) and (ii) because both plaintiff “and S.S. Nathans are seeking recovery of the same monies from defendants.” Pl. Mot. Joinder ¶ 6. In support of this argument, plaintiff asserts that:

[p]laintiff’s counsel has been contacted by counsel for S.S. Nathans and advised that S.S. Nathans intends to pursue claims against the defendants named in the proposed amended complaint for, *inter alia*, disgorgement of all profits obtained by Crescent for its sale of household cleaning and health and beauty aid products sold under S.S. Nathans’ name to Dollar General.

Id. ¶ 3.

**1. S.S. Nathans Is Not a Necessary Party Under Rule 19(a)(2)(i)**

The Court concludes that S.S. Nathans' alleged interest in defendant's Dollar General profits is insufficient to necessitate joinder under Rule 19(a)(2)(i). Plaintiff's argument under Rule 19(a)(2)(i) is based on the hypothetical situation in which S.S. Nathans files suit against defendant, seeks disgorgement of the exact profits sought by plaintiff, and no alternative monetary relief is available to S.S. Nathans in that action. This assertion is too speculative to justify joinder of S.S. Nathans in this case. See Janney Montgomery Scott, Inc., 11 F.3d at 405 ("Rule 19(a)(2)(i) is not triggered by the mere possibility that continuation of this federal case could have some effect on later litigation between [S.S. Nathans] and [defendant]. That possibility is too speculative to support a holding that [S.S. Nathans'] interests will, as a practical matter, be impaired or impeded by the continuation of this litigation in its absence."). Moreover, any interest S.S. Nathans has in this litigation is "merely a financial interest" in defendant's profits, and not a legally protected interest as required by Rule 19(a)(2). Liberty Mut. Ins. Co., 419 F.3d at 230. Accordingly, the Court denies the Motion for Joinder to the extent that it rests on Rule 19(a)(2)(i).

**2. S.S. Nathans Is Not a Necessary Party Under Rule 19(a)(2)(ii)**

The Court further concludes that S.S. Nathans is not a necessary party under Rule 19(a)(2)(ii). Plaintiff alleges that defendant is "subject to a substantial risk" of double or inconsistent obligations because both plaintiff and S.S. Nathans seek disgorgement of defendant's Dollar General profits. Fed. R. Civ. P. 19(a)(2)(ii). Again, this assertion is too speculative to justify joinder of S.S. Nathans. In the hypothetical situation in which S.S. Nathans files suit against defendant, S.S. Nathans' cause of action will necessarily be different from

plaintiff's causes of action in this case. This is so because S.S. Nathans is not a party to the contract between plaintiff and defendant that forms the basis of plaintiff's claims. See Torcise v. Community Bank of Homestead, 116 F.3d 860, 865-67 (11th Cir. 1997) (holding that defendant was not "being forced to disgorge the same fund twice" where, *inter alia*, the two lawsuits had different causes of action). Moreover, it is telling that defendant—the party protected by Rule 19(a)(2)(ii)—is manifestly unconcerned about the risk of multiple obligations, and opposes joinder of S.S. Nathans in this litigation. See Sindia Expedition, Inc. v. Wrecked & Abandoned Vessel, 895 F.2d 116, 122 (3d Cir. 1990) (holding that joinder was not necessary where absent party, protected by Rule 19(a)(2)(i), explicitly stated that it was unconcerned about its absence from the litigation). Accordingly, the Court denies the Motion for Joinder to the extent that it rests on Rule 19(a)(2)(ii).<sup>2</sup>

#### **IV. PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

In its Motion for Leave to File Amended Complaint, plaintiff seeks leave to amend its Complaint in order to (1) add substantive allegations regarding defendant's alleged sales to Dollar General under the S.S. Nathans name; (2) add four additional defendants to Count Two, alleging tortious interference with contract; (3) correct the name of defendant; and (4) revise plaintiff's claim for damages. Pl. Mot. Leave File Am. Compl. ¶¶ 2, 5-6. The four defendants whom plaintiff seeks to add are Richard Frazer, president of defendant Crescent; Empire Product Management, LLC ("Empire"), a limited liability company owned by Frazer and another person;

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<sup>2</sup> The Court concludes that S.S. Nathans is not a necessary party under Rule 19(a). Thus, the Court need not reach Rule 19(b), which governs joinder of a necessary party where joinder is not feasible. See Bank of America v. Hotel Rittenhouse Associates, 844 F.2d 1050, 1053 (3d Cir.1988); Angst v. Royal Maccabees Life Ins. Co., 77 F.3d 701, 705 (3d Cir. 1996).

Too Easy Products, a corporation “or a fictitious name/trade name for either Crescent or Empire”; and Better Way, a corporation “or a fictitious name/trade name for either Crescent or Empire.” Id. Ex. A. ¶¶ 3-6. For the reasons that follow, the Motion for Leave to File Amended Complaint is granted.

**A. Legal Standard: Federal Rule of Civil Procedure 15(a)**

Rule 15(a) provides, in relevant part, as follows: “A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served . . . Otherwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Rule 15(a) embodies the liberal pleading philosophy of the Federal Rules of Civil Procedure. Arthur v. Maersk, Inc., 434 F.3d 196, 202 (3d Cir. 2006). Accordingly, “[l]eave to amend must generally be granted unless equitable considerations render it otherwise unjust.” Id. at 204. “Among the factors that may justify denial of leave to amend are undue delay, bad faith, and futility.” Id. “[H]owever . . . ‘prejudice to the non-moving party is the touchstone for the denial of an amendment.’” Id. (quoting Cornell & Co. v. Occupational Safety & Health Review Comm’n, 573 F.2d 820, 823 (3d Cir. 1978)). The Court will consider each of the potential grounds for denying leave to amend in turn.<sup>3</sup>

**B. Granting Leave to Amend Would Not Prejudice Defendant**

“The issue of prejudice requires that [the Court] focus on the hardship to the defendant[]

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<sup>3</sup> Leave to amend may also be denied for “repeated failures to correct deficiencies with previous amendments.” Riley v. Taylor, 62 F.3d 86, 90 (3d Cir. 1995). Because plaintiff has not amended its Complaint previously, this ground for denying leave to amend is not at issue in this case.

if the amendment were permitted.” Cureton v. Nat’l Collegiate Athletic Ass’n, 252 F.3d 267, 273 (3d Cir. 2001). To state a cognizable claim of prejudice, the defendant must establish that it would be “‘unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered’” had the allegations in the amended complaint been timely made. Arthur, 434 F.3d at 206 (quoting Bechtel v. Robinson, 886 F.2d 644, 652 (3d Cir. 1989)).

In this case, plaintiff filed its original Complaint on July 6, 2006. On February 21, 2007, plaintiff filed the instant Motion for Leave to File Amended Complaint. The discovery deadline in this case expired on March 1, 2007. Defendant asserts that “amending now would significantly prejudice Crescent in further delaying this action.” Def.’s Mem. Law Opp. at 10. Defendant further argues that “[t]he joinder of new parties would essentially restart the pleading and discovery process and result in many months of delay at a time when discovery in the pending action should be nearly completed . . .” Id. at 12.<sup>4</sup>

Significantly, defendant does not argue that granting leave to amend would deprive it of the opportunity to present any facts or evidence, which it would have presented if plaintiff had amended earlier. Indeed, the proposed amended complaint adds no new counts. Although the proposed amended complaint does add substantive allegations against defendant, and adds parties related to defendant, “[t]he evidence required to meet these new allegations is substantially similar to that which was originally required.” Dole v. Arco Chemical Co., 921 F.2d 484, 488 (3d Cir. 1990). Moreover, because of the relationship between defendant and the

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<sup>4</sup> Defendant makes this argument in opposition to plaintiff’s Motion for Joinder. However, because granting the Motion for Leave to File Amended Complaint would also result in the addition of new parties, the Court considers defendant’s argument in ruling on the later Motion.

additional defendants in the proposed amended complaint, the Court does not believe it will be necessary to “restart the pleading and discovery process . . .” although additional discovery (and an amended scheduling order) will be required. While that might result in some delay, the Court concludes that the granting of the Motion for Leave to File Amended Complaint will not prejudice defendant under Rule 15(a).

**C. Plaintiff’s Delay in Filing for Leave to Amend Was Not “Undue” or Motivated by “Bad Faith”**

“The question of undue delay, as well as the question of bad faith, requires that [the Court] focus on the plaintiff’s motives for not amending their complaint to assert this claim earlier.” Lindquist v. Buckingham Twp., 106 Fed. Appx. 768, 775 (3d Cir. 2004).

In this case, plaintiff asserts a legitimate “motive[] for not amending” its complaint earlier. Specifically, plaintiff avers that it only recently learned of the allegations regarding S.S. Nathans and the additional defendants in the proposed amended complaint. Pl. Mot. Leave File Am. Compl. ¶ 3.

In response, defendant asserts that plaintiff’s “suggestion that it first learned of Nathans recently is not true.” Def.’s Mem. Law Opp. at 9. In support of this assertion, defendant identifies two documents, in which plaintiff previously referred to “the entity known as ‘Nathans’”: plaintiff’s Rule 26 disclosures, dated December 6, 2006, and plaintiff’s first discovery demands, dated January 29, 2007. Id.<sup>5</sup>

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<sup>5</sup> Plaintiff’s First Set of Interrogatories provides, *inter alia*: “With respect to an entity known as ‘Nathans’, [sic] set forth the full name of such entity, the owner of such entity, the relationship of such entity to Crescent and/or the principals of Crescent, such entity’s place of business, and describe the type of business engaged in by such entity, and identify documents relating thereto.” Def.’s Resp. Ex. L at 6.

Plaintiff’s Rule 26 Disclosures provides, in relevant part: “For purposes of the description

Having reviewed these documents, the Court finds credible plaintiff's assertion that it recently learned of the allegations regarding S.S. Nathans. Although plaintiff previously referred to "the entity known as 'Nathans'" in this litigation, plaintiff did not identify "Sonny Nathans" or "S.S. Nathans." Nor did plaintiff evince any knowledge about S.S. Nathans beyond its potential relationship to defendant. In addition, the documents identified by defendant are dated December 6, 2006 and January 29, 2007, within weeks of the filing of the instant Motion for Leave to File Amended Complaint. "The liberality of Rule 15(a) counsels in favor of amendment even when a party has been less than perfect in the preparation and presentation of a case." Arthur, 434 F.3d at 206. Accordingly, the Court concludes that the filing of the Motion for Leave to File Amended Complaint was not the product of "undue delay" or "bad faith."

**D. Granting the Motion for Leave to Amend Would Not Be Futile**

"'Futility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted. In assessing 'futility,' the District Court applies the same standard of legal sufficiency as applied under Rule 12(b)(6)." Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000) (citations omitted). When considering a motion to dismiss under Rule 12(b)(6), a court must take all well-pleaded facts in the complaint as true and view them in the light most favorable to plaintiff. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969); In re Merck & Co., Inc. Sec. Litig., 432 F.3d 261, 266 (3d Cir. 2005). Claims in a complaint will be dismissed only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

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of the following documents, the term 'Crescent' shall refer to Crescent and/or the entity known as 'Nathans.'" Def.'s Resp. Ex. K at 6.

In this case, defendant does not argue explicitly that granting the Motion for Leave to File Amended Complaint would be futile. However, defendant asserts three arguments, which this Court construes in “futility” terms under Rule 15(a). Specifically, defendant argues that: (1) plaintiff does not plead any substantive allegations against the additional defendants in the proposed amended complaint; (2) plaintiff does not allege that this Court has personal jurisdiction over the additional defendants in the proposed amended complaint; and (3) Count Two of the proposed amended complaint, alleging tortious interference, is time-barred. The Court considers each of these arguments in turn.

**1. Plaintiff Asserts Substantive Allegations Against the Additional Defendants in the Proposed Amended Complaint**

Defendant asserts that plaintiff’s proposed amended complaint contains “no substantive allegations against the proposed defendants.” Def.’s Mem. Law Opp. at 9. The Court disagrees.

In the proposed amended complaint, plaintiff pleads substantive allegations against the additional defendants, Frazer, Empire, Too Easy Products, and Better Way. Most notably, plaintiff alleges that all “defendants have knowingly and intentionally interfered with the business relationship that existed between Pegasus and Dollar General, resulting in Dollar General’s termination of its business relationship with Pegasus.” Pl. Mot. Leave File Am. Compl., Ex. A. ¶ 35. In addition, plaintiff alleges that Richard Frazer directed the “scheme” in which defendant sold products to Dollar General under the S.S. Nathans name, *id.* ¶¶ 18-21; that defendant used Empire “to launder the illicit monies which they received from Dollar General,” *id.* ¶ 24; and that Too Easy Products and Better Way are corporations or fictional names for Crescent or Empire, *id.* ¶¶ 5-6.

The Court further concludes that as a matter of law the allegations in the proposed amended complaint are sufficient to state a claim upon which relief can be granted under Rule 12(b)(6). To state a claim for tortious interference with contractual relations, a plaintiff must allege the following elements: (1) a contractual relationship between the plaintiff and third parties; (2) a purpose or intent to harm the plaintiff by interfering with the contractual relationship; (3) the absence of a privilege or justification on the part of the defendant; and (4) the occurrence of actual harm or damage to the plaintiff as a result of defendant's conduct. Fluid Power, Inc. v. Vickers, Inc., 1993 WL 23854, \*4 (E.D. Pa. Jan. 28, 1993); see also Brokerage Concepts, Inc. v. U.S. Healthcare, Inc., 140 F.3d 494, 530 (3d Cir. 1998).

In this case, plaintiff alleges that the additional defendants in the proposed amended complaint intentionally interfered with its contractual relationship with Dollar General, and that this interference resulted in plaintiff's loss of the Dollar General contract. Viewing these allegations in the light most favorable to plaintiff, the Court concludes that plaintiff's proposed amended complaint states a claim of tortious interference against the additional defendants. Thus, amendment is not futile for lack of substantive allegations.

## **2. Plaintiff's Asserts that the Court Has Personal Jurisdiction Over the Additional Defendants in the Proposed Amended Complaint**

Defendant further asserts that plaintiff "has pleaded no jurisdictional allegations, much less offered proof in support of jurisdictional allegations, to justify the exercise of jurisdiction over any of the prospective defendants it wishes to add to the case." Def.'s Mem. Law Opp. at 14. Plaintiff replies that "the proposed defendants' nefarious conduct has occurred in Pennsylvania, and that defendants have sold, or circulated for sale, the products at issue in this

Commonwealth. As such, the proposed new defendants are subject to personal jurisdiction” in this Court. Pl.’s Reply Def.’s Mem. Law. Opp. at 6.

The Court does not rule on the issue of personal jurisdiction at this time. In the context of the Motion for Leave to File Amended Complaint, the Court concludes only that it “conceivably could have personal jurisdiction” over the additional defendants in the proposed amended complaint. Hershey Pasta Group v. Vitelli-Elvea Co., 1995 WL 862016, \*4 (M.D. Pa. Jun. 27, 1995); see also Mylan Pharmaceuticals, Inc. v. Kremers Urban Development, 2003 WL 22711586, \*4 (D. Del. Nov. 14, 2003) (granting leave to amend complaint over objection that court lacked personal jurisdiction); Impact Labs, Inc. v. X-Rayworld.com, Inc., 2003 WL 21715872, \*3 (D. Del. Jul. 24, 2003) (same). Accordingly, amendment is not futile for lack of personal jurisdiction.

### **3. Plaintiff’s Asserts that Count Two, Alleging Tortious Interference, Is Timely**

Finally, defendant asserts that plaintiff’s proposed amended complaint is time-barred as to Count Two, alleging tortious interference with contract. Def.’s Mem. Law Opp. at 17. Plaintiff replies that this count is timely because the “statute of limitations for tortious interference with business relations only begins to run as of the date that Pegasus became aware, or should have become aware, that defendants had tortiously interfered with Pegasus’ Dollar General business,” and that this occurred within the limitations period. Pl.’s Reply Def.’s Mem. Law. Opp. at 7 (citation omitted).

The Court declines to rule on the timeliness of plaintiff’s tortious interference count in ruling on the Motion for Leave to File Amended Complaint. “The [C]ourt concludes that the more efficient route would be to allow [plaintiff] to amend its complaint at the present time . . .

should it become clear that” plaintiff’s tortious interference count is untimely, that issue may be presented by motion for summary judgment after completion of relevant discovery. Impact Labs, Inc., 2003 WL 21715872 at \*3. Because plaintiff’s claims could conceivably be timely, amendment is not futile on statute of limitations grounds.

## **V. CONCLUSION**

For the foregoing reasons, Plaintiff’s Motion for Joinder of Party Pursuant to Federal Rule of Civil Procedure 19(a) is denied on the ground that S.S. Nathans is not a necessary party under Rule 19(a). Plaintiff’s Motion for Leave to File Amended Complaint is granted on the ground that granting leave to amend is in the interest of justice under Rule 15(a).

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<hr/>	:	
<b>PEGASUS INTERNATIONAL, INC.</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION</b>
	:	<b>NO. 06-2943</b>
	:	
<b>CRESCENT MANUFACTURING</b>	:	
<b>COMPANY</b>	:	
	:	
<b>Defendant.</b>	:	
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**ORDER**

**AND NOW**, this 2nd day of April, 2007, upon consideration of Plaintiff's Motion for Joinder of Party Pursuant to Federal Rule of Civil Procedure 19(a) (Document No. 24, filed February 21, 2007); Plaintiff's Motion for Leave to File Amended Complaint (Document No. 25, filed February 21, 2007); Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Joinder and Motion for Leave to Serve an Amended Complaint (Document No. 28, filed February 28, 2007); and Plaintiff's Reply to Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Joinder and Motion for Leave to File an Amended Complaint (Document No. 30, filed March 8, 2007), for the reasons stated in the attached Memorandum, **IT IS ORDERED**, as follows:

1. Plaintiff's Motion for Joinder of Party Pursuant to Federal Rule of Civil Procedure 19(a) is **DENIED**; and
2. Plaintiff's Motion for Leave to File Amended Complaint is **GRANTED**. Plaintiff shall file the amended complaint and arrange for issuance of summonses and service of the summonses and amended complaint on or before April 9, 2007.
3. The Court will conduct a scheduling conference after appearances for the newly

named defendants are filed. Plaintiff, through counsel, shall notify the Court (letter to Chambers, Room 12613) when such appearances are filed.

4. The caption of this case is amended to correct the name of the defendant to read “Crescent Marketing, Inc. d/b/a Crescent Manufacturing” and to add the following individuals and entities as defendants: Richard Frazer; Empire Product Management, LLC; Too Easy Products; and Better Way Company.

**BY THE COURT:**

**/s/ Honorable Jan E. DuBois**  
**JAN E. DUBOIS, J.**